

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1905.

No. 1595.

No. 17, SPECIAL CALENDAR.

FRANK S. CAHILL AND ARTHUR E. H. MIDDLETON,
PLAINTIFFS IN ERROR,

vs.

DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption.....	<i>a</i>	1
Information	1	1
Bill of exceptions.....	2	2
Copy of docket entries.....	8	5
Clerk's certificate	9	6
Writ of error ...	10	6

In the Court of Appeals of the District of Columbia.

FRANK S. CAHILL ET AL., Plaintiffs in Error, }
vs. } No. 1595.
DISTRICT OF COLUMBIA.

a In the Police Court of the District of Columbia, July Term,
1905.

DISTRICT OF COLUMBIA }
vs. } No. 273,067. Information
ARTHUR E. H. MIDDLETON, FRANK S. } for Violation of Police
Cahill. } Regulations.

Be it remembered, that in the police court of the District of Columbia, at the city of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above entitled cause, to wit:

1 (Information.)

In the Police Court of the District of Columbia, July Term, A. D.
1905.

THE DISTRICT OF COLUMBIA, ss:

Andrew B. Duvall, Esq., corporation counsel, by James L. Pugh, Jr., Esq., assistant corporation counsel, who, for the District of Columbia prosecutes in this behalf in his proper person, comes here into court and causes the court to be informed, and complains that Arthur E. H. Middleton and Frank S. Cahill, late of the District of Columbia aforesaid, on the 7th day of July in the year A. D. nineteen hundred and five, in the District of Columbia aforesaid, and in the city of Washington, on L street, northwest, did then and there have in store and keep for sale certain inflammable oil and fluid, to wit: gasoline, without first having obtained a permit so to do; contrary to and in violation of the police regulations of the District of Columbia, and constituting a law of the District of Columbia.

ANDREW B. DUVALL,
Corporation Counsel,
By JAMES L. PUGH, JR.,
Assistant Corporation Counsel.

Personally appeared P. W. Nicholson this 7th day of July, A. D. 1905, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

[Seal Police Court of District of Columbia.]

JOSEPH HARPER,
Deputy Clerk of the Police Court of the District of Columbia.

(Bill of Exceptions.)

In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA

vs.

FRANK S. CAHILL and ARTHUR E. H. MIDDLETON.

} No. 273,067.

Be it remembered that at the trial of this case on the 20th day of July, 1905, before the Honorable Ivory G. Kimball, one of the judges of said court, the defendants by their counsel moved the court to quash the information for the following reasons, to wit:

First. Because section 3, article 2, of the Police Regulations is illegal and void in that it amounts to a redelegation of a discretionary power to the chief of the fire department and the building inspector which was by the act of Congress of January 26, 1887, solely delegated to the Commissioners of the District of Columbia.

But the court overruled the motion, and counsel for defendants then and there duly excepted.

Second. Because section 3, article 2, of the Police Regulations is illegal and void in that it practically authorizes the prohibition of the storage of gasoline in the District of Columbia, whereas by the act of Congress of January 26th, 1887, the Commissioners of the District of Columbia themselves were merely given the right to make, modify and enforce usual and reasonable regulations to regulate the storage of highly inflammable substances, &c.

But the court overruled said motion, and counsel for the defendants then and there duly excepted.

Third. Because section 3, article 2, of the Police Regulations is void for uncertainty, inasmuch as it fails to provide any rules for governing the recommendations of the chief of the fire department and the building inspector either for or against the issue of a permit or license and apparently leaves this matter to their ungoverned discretion.

But the court overruled said motion, and counsel for the defendants then and there duly excepted.

Fourth. Because section 3, article 2, of the Police Regulations is illegal and void in that it seeks to regulate the sale of gasoline in the District of Columbia, whereas by the act of Congress of Jan-

uary 26th, 1887, the Commissioners of the District of Columbia were merely authorized to regulate the storage of inflammable substances.

But the court overruled said motion, and counsel for the defendants then and there duly excepted.

Fifth. Because sections 3 and 5, of article 2, of the Police Regulations are inconsistent, irreconcilable and unreasonable, for that by section 1, section 3, and section 4 the storage of gasoline in buildings is permissible and provided for, and by section 5 such storage in buildings is prohibited absolutely by the restriction that the tank required for the storage of gasoline must be "buried under ground at least three feet beneath the surface and at least six feet outside and away from the nearest wall of any building."

But the court overruled said motion, and counsel for the defendants then and there duly excepted.

Sixth. Because section 5, article 2, of the Police Regulations is illegal and void for uncertainty, in failing to lay down with sufficient clearness the design of tank which will be approved, and other rules, as to connections, etc. for said tank.

But the court overruled said motion, and counsel for the defendants then and there duly excepted.

Seventh. Because section 5, article 2, of the Police Regulations is illegal and void, for that it is unreasonable and arbitrary in limiting the quantity of gasoline to be stored to fifty gallons.

But the court overruled said motion, and counsel for the defendants then and there duly excepted.

Eighth. Because section 5, article 2, of the Police Regulations is illegal and void for uncertainty, inasmuch as it provides that licenses granted for storing gasoline may be revoked when in the judgment of the Commissioners it is necessary to protect the public safety, and yet fails to set up any state of facts that may warrant said revocation.

But the court overruled the said motion, and counsel for the defendants then and there duly excepted.

Ninth. Because section 5, article 2, of the Police Regulations is unconstitutional, for that it provides for the revocation of a license for storing gasoline when in the judgment of the Commissioners, and which might amount to confiscation of private property without due process of law, and also to an infringement of the equality clause of the Constitution.

But the court overruled said motion, and counsel for the defendants then and there duly excepted.

Tenth. Because section 5, article 2, of the Police Regulations is illegal and void, in that it is unconstitutional, amounting to unjust discrimination and class legislation, for the reason that it practically prohibits the storage of gasoline in connection with any building not provided with sufficient yard to meet the requirements of burying the storage tank six feet outside and away from the nearest wall, thus limiting such storage to those buildings having a yard.

But the court overruled said motion, and counsel for the defendants then and there duly excepted.

Eleventh. Because the information fails to charge an offense punishable under the law, the mere storage of gasoline being a common law right and not capable of being made a punishable offense by failure to obtain a license.

But the court overruled the said motion, and counsel for the defendants then and there duly excepted, and gave notice of his intention to apply for a writ of error to the Court of Appeals of the District of Columbia.

A plea of not guilty was then entered.

And thereupon the District of Columbia to maintain the issue on its part joined, offered evidence tending to show that the defendants are maintaining an automobile establishment at No. 1319 L street, northwest, in the city of Washington, District of Columbia, where automobiles are received for storage; that on July 6th the fire marshal and the building inspector visited said premises and found thereon a five-gallon domestic can filled with gasoline and another five-gallon can not quite full of gasoline; and also that somewhere under ground there existed a tank in which some gasoline was stored, but the quantity it contained or the capacity of the tank was unknown to them; that pipes arose from said tank through the interior of said building from the pavement and terminated in a spigot in a doorway of said building; that upon turning or opening of said spigot there was only extracted from said buried tank about half a gill of gasoline; and that one of the defendants admitted that the gasoline from the tank was employed for replenishing the five-gallon cans found and the latter used to fill the receptacles of the various automobiles kept by them. This was done without the required license to store gasoline for sale in this buried tank.

Thereupon the District of Columbia rested.

The defendants by their counsel thereupon offered in evidence a permit or tax license issued by the District of Columbia to their company for conducting an automobile storage establishment and for which they paid the sum of \$54.08, which license extended from the 1st day of December, 1904, to the 1st day of November, 1905.

The defendants also offered in evidence the original application for a permit for the storage of gasoline in a fifty-gallon tank, which application was conceded by the District of Columbia to be in due form and addressed to the proper authorities, and was dated December 1st, 1904. That the said application showed on its back the endorsement by the fire marshal and the chief engineer of the District of Columbia to the effect that they and each of them approved or recommended that a license or permit be granted the said company for the storage of gasoline, but said officers testified that no permit had been issued or refused.

And thereupon counsel for the defendants moved the court to instruct itself that the defendants be discharged on the following grounds:

1. That a punishable offense had not been made out.

2. That the finding on the premises of two five-gallon cans more or less filled with gasoline is not such storage as is contemplated by the police regulations.

3. That the defendants having complied with the regulations in so far as they are able, it is not an offense to be without the requisite permit.

4. That the defendants having complied with the regulations in regard to storing, and their permit having been approved by the chief engineer of the fire department and the fire marshal, the complainant is without power to prosecute these defendants by reason of its own failure to grant the necessary formal permit.

5. That the information charges a storing and keeping for sale while the proof fails to show that the gasoline was kept for such purpose.

But the court, through Mr. Justice Kimball, overruled each of the above motions, and held that the condition under which the gasoline — found stored and used from said buried tank and the business conducted under the license exhibited raised the presumption that it was kept there for sale, and the keeping in the manner shown was a violation of the law. And thereupon the court found the defendants guilty and imposed a fine of twenty dollars.

Wherefore, these defendants, by their counsel, present this their bill of exceptions to the court to settle and sign the same in accordance with the statute in such cases made and provided, and in accordance with the rules of the Court of Appeals of the District of Columbia, this 24th day of July, 1905.

[SEAL.]

I. G. KIMBALL,
Judge Police Court, D. C.

8

(Copy of Docket Entries.)

In the Police Court of the District of Columbia, July Term, 1905.

DISTRICT OF COLUMBIA	}	No. 273,067. Information for Violation of Police Regulations.
vs.		
ARTHUR E. H. MIDDLETON, Frank S. Cahill.		

July 11, 1905.—Motion to quash information filed.

July 20, 1905.—Motion to quash information argued and overruled. Defendants arraigned. Plea: Not guilty. Judgment: Guilty. Sentence: To pay a fine of twenty dollars, and, in default, to be committed to the workhouse for the term of sixty days.

Exceptions taken to the rulings of the court on matters of law and notice given by the defendants at the time of the several rulings of their intention to apply to a justice of the Court of Appeals of the District of Columbia for a writ of error.

Recognizance in the sum of one hundred dollars entered into on writ of error to the Court of Appeals of the District of Columbia upon the condition that in the event of the denial of the application for a writ of error, the defendants will, within five days next after the expiration of ten days, appear in the police court and abide by and perform its judgment, and that in the event of the granting of such writ of error, the defendants will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises. Henry P. Sanders, surety.

July 22, 1905.—Bill of exceptions filed.

July 24, 1905.—Bill of exceptions settled and signed.

July 29, 1905.—Writ of error received from the Court of Appeals of the District of Columbia.

9 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss :
District of Columbia,

I, Joseph Y. Potts, clerk of the police court of the District of Columbia, do hereby certify *that* the foregoing pages, numbered from 1 to 8 inclusive, to be true copies of originals in cause No. 273067 wherein The District of Columbia is plaintiff and Arthur E. H. Middleton and Frank S. Cahill are defendants, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, — the city of Washington, in said District, this 4th day August, A. D. 1905.

[Seal Police Court of District of Columbia.]

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

10 UNITED STATES OF AMERICA, ss :

The President of the United States to the Honorable Ivory G. Kimball, judge of the police court of the District of Columbia, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court, before you, between District of Columbia, plaintiff, and Frank S. Cahill and Arthur E. H. Middleton, defendants, a manifest error hath happened, to the great damage of the said defendants as by their complaint ap-

pears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Seth Shepard,
Seal Court of Appeals, Chief Justice of the said Court of Appeals,
District of Columbia. the 29th day of July, in the year of our
Lord one thousand nine hundred and five.

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by

SETH SHEPARD,

*Chief Justice of the Court of Appeals
of the District of Columbia.*

Endorsed on cover: District of Columbia police court. No. 1595.
Frank S. Cahill *et al.*, plaintiffs in error, *vs.* District of Columbia.
Court of Appeals, District of Columbia. Filed Aug. 4, 1905. Henry
W. Hodges, clerk.